



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Mr. Patrick S. Dohoney
Assistant District Attorney
Tarrant County
Office of the Criminal District Attorney
401 West Belknap
Fort Worth, Texas 76196-0201

OR95-865

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 33629.

The Tarrant County Sheriff's Office (the "sheriff's office") received a request for information from an individual who applied for the position of booking clerk but was not hired. The requestor seeks "a copy of my application file, including the results of my July[] 1994 polygraph examination, as well as a copy of the sources of the information your department obtained." You have submitted copies of information responsive to the request for our review. See Gov't Code § 552.303.

You first claim that the sheriff's office need not comply with this request because the language "a copy of the sources of the information your department obtained" is overbroad. A governmental body must make a good-faith effort to relate a request to information in the governmental body's possession, and we note that, in fact, you have submitted for our review copies of information that appear responsive to the request. We will, therefore, proceed to consider the exceptions to disclosure you raise.

You first contend that the polygraph test and results are excepted from required public disclosure. You cite article 4413(29cc), section 19A, V.T.C.S., for this proposition. Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Article 4413(29cc), section 19A(a), V.T.C.S., which you cite, deems confidential "information acquired from a polygraph examination." We believe this refers only to test results, not test questions, and we are unaware of any

statutory protection for polygraph test questions. However, a licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose to the examinee information acquired from a polygraph examination. V.T.C.S. art. 4413(29cc), § 19A(c)(1). Thus, article 4413(29cc), section 19A does not deem confidential the results of the polygraph examination in this instance, nor does it protect the test questions or any other information related to the polygraph test.

You also believe section 552.111 of the Government Code excepts the results of the polygraph test, and you cite Open Records Decision No. 565 (1990) as support. This office implicitly overruled that part of Open Records Decision No. 565 (1990) pertaining to section 552.111 in Open Records Decision No. 615 (1993).

Section 552.111 of the Government Code authorizes a governmental body to withhold from required public disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) this office construed the statutory predecessor to section 552.111 to except "from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body at issue." Open Records Decision No. 615 (1993) at 5. The decision emphasized that "to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters. . . ." *Id.*

The information in the application file, including the results of the polygraph examination, relate to routine personnel matters. Consequently, the sheriff's office may not withhold the results of the polygraph examination under section 552.111.

You believe the criminal history information in the application file is confidential under section 552.101. We agree. The information you submitted for our review appears to have been generated by the Texas Crime Information Center and appears to have derived, in part, from the National Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of criminal history information that a state obtains from the federal government. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information the state generates. *Id.*

Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety maintains (the "DPS"), except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. See Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency, such as the sheriff's office, to obtain criminal history record information; however, the criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1).

You believe section 552.111 of the Government Code excepts the background investigation report included in the application file. As we stated above, section 552.111 does not apply to information regarding routine personnel matters. Accordingly, the sheriff's office may not withhold the background investigation report from the requestor.

You believe section 552.115 of the Government Code excepts the applicant's birth certificate. As you mention, section 552.115 protects only those birth records in the possession of the bureau of vital statistics of the Texas Department of Health. The sheriff's office is not the bureau of vital statistics. Thus, section 552.115 does not authorize the sheriff's office to withhold the requested birth certificate.

Finally, you contend that section 552.111 excepts the personal references contained in the application file. The personal references relate to a routine personnel matter. Accordingly, section 552.111 does not authorize the sheriff's office to withhold them.

In summary, the sheriff's office must release to the requestor all of the requested information except the criminal history information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 of the Government Code regarding any other records. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RHS/rho

Ref.: ID# 33629

Enclosures: Submitted documents

cc: Ms. Kelly Ann Greer
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(w/o enclosures)